

Contract Transparency Regional Webinar

Anglophone Africa

Thursday 10 December 2020



The global standard for the good
governance of oil, gas and mineral
resources.

Outline

1. Why Contract Transparency is important
2. Interpretation of Requirement 2.4
3. Overcoming Obstacles to Contract Disclosure
4. Going beyond: Contract Analysis
5. General discussion
6. Summary and next steps

1. Why Contract Transparency is important



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Why is Contract Transparency important

■ Benefits for citizens:

- *Monitor compliance*
- *enables all parties to understand the terms*

■ Benefit for Governments:

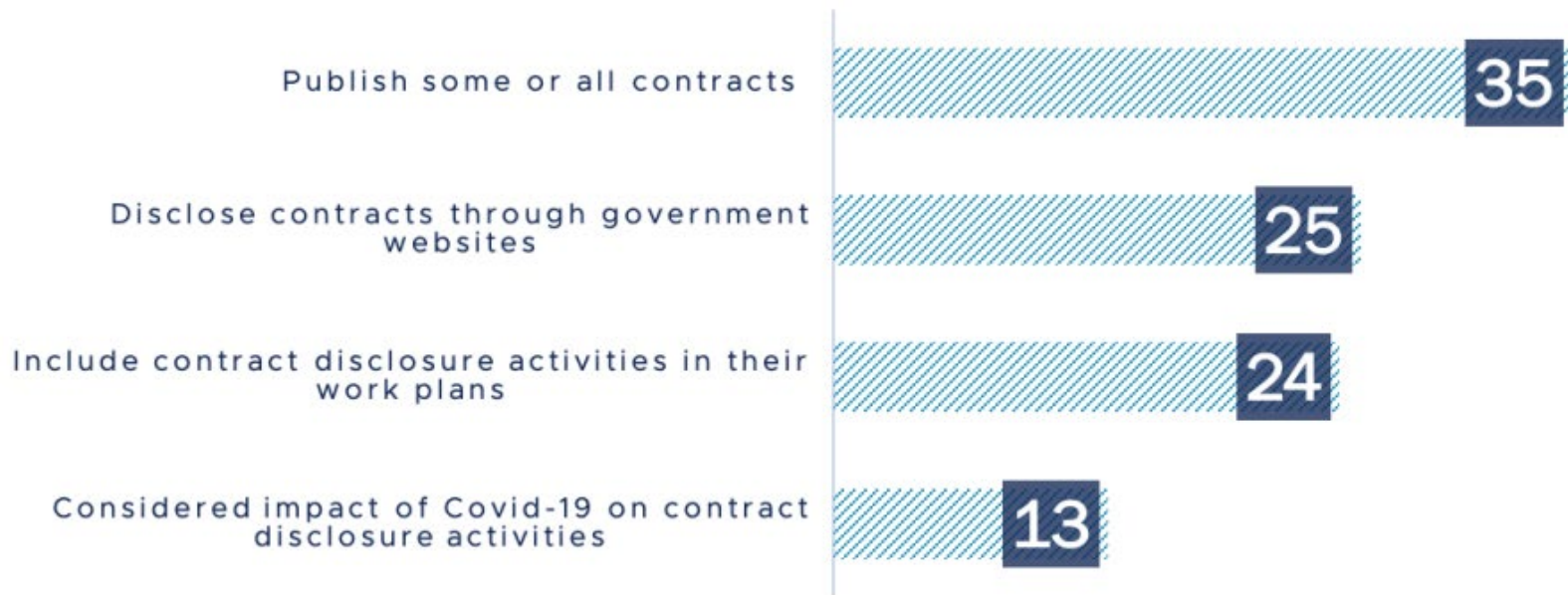
- *incentivizes government officials to arrange fair contracts and deters them from concluding contracts that are disadvantageous to citizens*
- *Contracts that are disclosed can be more easily enforced*

■ Benefits for companies:

- *supports open, fact-based dialogue that can help build trust, reduce conflict and reinforce a company's social license to operate*

Contract Disclosure: Overview in EITI countries

Contract transparency in EITI implementing countries



Contract Disclosure: Overview in Anglophone Africa

Anglophone & Lusophone African countries

5 Publish petroleum contracts

Ghana, Liberia, Malawi, Mozambique, São Tomé and Príncipe

4 Publish mining contracts

Liberia, Malawi, Mozambique, Sierra Leone

2. Interpretation of Requirement 2.4



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Poll: Comprehension of Requirement 2.4

- What is the deadline for the publication of contracts awarded, entered into or modified in 2021, including licences and annexes?
- In order to overcome obstacles to confidentiality clauses, MSGs are required to
- Does an amendment to the contract trigger disclosure of contracts executed before January 1, 2021?



What are the requirements of the 2019 EITI Standard?

Implementing countries are required to :

- Publicly disclose all contracts and licenses that are granted, entered into or modified on or after January 1, 2021.
- Document the government's policy on the disclosure of contracts and licenses setting out the terms and conditions for the exploration and exploitation of oil, gas or minerals.

Encouragements and Expectations

- Implementing countries are encouraged to publicly disclose all contracts and licenses which set the conditions for the exploitation of oil, gas and minerals (concluded before 2021).
- It is expected that the MSG adopt and publish a plan for systematic disclosure of contracts including :
 - *Timelines and deadlines for disclosure*
 - *Plans to overcome obstacles to disclosure*

Interpretation of Requirement 2.4 : Definitions

Scope of the Requirement:

Requirement 2.4.d – contracts/2.4.a – licences

- *The full text of any contract, concession, production sharing agreement or other agreement concluded by or with the government and setting out the conditions for the exploitation of oil, gas and mining resources.*
- *The full text of any addenda, schedules or endorsements*
- *The full text of any amendment*

What is considered an annex?



Interpreting Requirement 2.4 : Exploration contracts

Scope of the Requirement:

Requirement 2.4.d – contracts/2.4.a – licences

- *The full text of any contract, concession, production sharing agreement or other agreement concluded by or with the government and **setting out the conditions** for the exploitation of oil, gas and mining resources.*
- *The full text of any addenda, schedules or riders*
- *The full text of any changes*

The screenshot shows the 'PETROLEUM REGISTER' website for 'EAST KETA OFFSHORE'. The page features a navigation menu with 'Home', 'Exploration History', 'Contract Areas', 'Licensing Rounds', 'Procurement', 'Legislations', and 'More'. A search bar is located in the top right corner. The main content area includes logos for GOSCO, HERITAGE, BLUESTAR, and EXPLORCO. A sidebar on the left lists various document types: Petroleum Agreement, Registration Permits, Exploration and Development Permits, Licenses to Install and Operate, Facilities, Permits to Install and Operate, Reconnaissance Licenses, Drilling permits, Production permits, Flaring or Venting Authorisations, Approval of Third Party Access, Permitted Mortgages, Assignments, Any other Permit, Authorization, Approval, Certificate or Consent. The main text provides details about the operator (GNPC Operating Services Company Limited (GOSCO) - 11% interest in block), other contracting parties (Heritage Exploration and Production Ghana Limited - 38.7% interest in block, Blue Star Exploration Ghana Limited - 38.7% interest in block, GNPC Exploration and Production Company Limited (GNPC EXPLORCO) - 11.6% interest in block), contract area size (2,239 sq.km), effective date (February 05, 2015), exploration period (7 years), current phase of operations (Initial Exploration Period [2 years] [February 5, 2015 – February 4, 2017]), extension (s) (+ 2 years [February 5, 2017 – February 4, 2019]), and minimum initial exploration programme (Reprocess existing 2D and acquire 1,500 sq.km 3D seismic, Minimum Expenditure: US\$ 15,000,000). The status of operations is noted as 'Operator reported that it has reached an agreement with TGS to license'.

Application to licensing regimes:

How do we apply this Requirement to licensing schemes? E.g. Germany, Norway, Zambia

- In some cases, license documents may contain several detailed project-specific terms and conditions, so they more closely resemble contracts despite their name (e.g., Chad).
- In some licensing regimes, the government may also sign additional related documents/agreements that significantly alter the terms and conditions of the project.

Interpretation of Requirement 2.4: Amendments

- Requirement 2.4.a

Countries are required, as of January 1, 2021, to disclose contracts/licenses that are entered into, concluded or AMENDED.

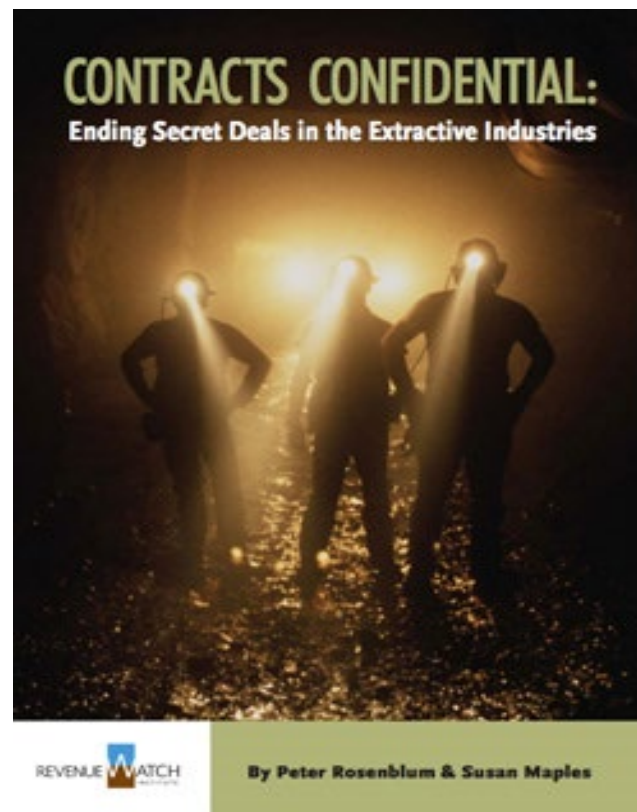
Does an amendment require disclosure, even for a contract executed before January 1, 2021?

Interpreting Requirement 2.4 : Confidentiality clauses

■ Requirement 2.4.a

Countries are required, as of January 1, 2021, to disclose contracts/licenses that are granted, concluded or modified.

What interim measures are allowed for contracts with confidentiality provisions?



Validation of Requirement 2.4

- Considerations for assessing Requirement 2.4 (e.g. time needed to address barriers, aspects for assessment)
- Details will be agreed in the Validation guide

3. Overcoming obstacles to Contract Disclosures



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What forms of obstacles to contract disclosure do countries face?

- Lack of enabling Legal framework – Confidentiality clauses
- Challenges with ensuring comprehensiveness of disclosures
- Capacity constraints
- Political commitments; policy vs. practise
- Mobilising company support
- Impact of COVID on Contract Transparency work in countries

Country example: Nigeria

CHALLENGES/BARRIERS TO CONTRACT DISCLOSURE

NEITI
Nigeria
Extractive
Industries
Transparency
Initiative



Lack of Legal Framework

Extant legal framework does not require companies or any agents of government to make contracts public.



Confidentiality Clauses

Dr. Don Hubert in 2018, analysed some publicly available contracts in Nigeria and showed that while the contracts in most cases, did not require disclosure, it did not inhibit them either.



Commercial Sensitivity

Some IOCs have indicated that they are not averse to disclosing their contracts, they have done so already in other jurisdictions. They however refer to NNPC for direction in respect of contracts here in Nigeria. The GMD NNPC, in an engagement has indicated he is open to disclosing contracts but raised the issue of commercial sensitivity in some clauses that he says will hinder the disclosure of full contracts.

Country example: Nigeria (2)

EFFORTS IN OVERCOMING THE CHALLENGES



Nigeria is currently without a MSG in place (last MSG wrapped up in February 2020). However, the secretariat is working with a consultant to define a framework for achieving contract disclosure in Nigeria.



Past efforts of various stakeholders in this push has led to the inclusion of clauses that significantly strengthens contract disclosure in Nigeria in the new PIB recently presented to the National Assembly.

KEY STAKEHOLDERS ENGAGEMENT

Full contract transparency requires the commitment of key actors in government and industry, as well as a strong advocacy from civil society.

- National Assembly
- MMSD
- Public and Privat Development centre
- NRGi
- MCO
- Extractive Industries Companies Forum
- NNPC
- OAGF
- Selected civil society groups
- DPR
- CBN
- Selected host community organisations
- RMAFC
- BPP

4. Journey to Contract Disclosure: Contract Use



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resources.

Country example: Ghana



PETROLEUM COMMISSION, GHANA
Regulating, Managing & Coordinating Upstream Petroleum Activities



CONTRACT TRANSPARENCY IN GHANA'S UPSTREAM PETROLEUM INDUSTRY

Presentation by:



Open, Transparent and Competitive Contract Awarding system

Ghana changed the system for award of license/blocks from the previous walk-in/open door policy to more competitive award or licensing round system. This is legislated particularly in:

- Section 10 of the Petroleum (Exploration and Product) Act, 2016 Act 919
<https://www.petrocom.gov.gh/wp-content/uploads/2018/12/Act-9190001.pdf>

Further;

- Section 17 of the Act prescribes the method for sub-contracting by a contractor and sub-contractor
- Section 91 of the Act states that transactions between a contractor and affiliates shall be conducted on the basis of prevailing international competitive prices

Open, Transparent and Competitive Contract Awarding system

There is Regulation that amplifies the Provisions of the Act as follows:
Petroleum (Exploration and Production) (General) Regulation, 2018

<https://www.petrocom.gov.gh/wp-content/uploads/2019/12/PETROLEUM-EXPLORATION-AND-PRODUCTION-GENERAL-REGULATIONS-2018-LI-2359.pdf>

- Regulations 9 to 21 of the Petroleum (Exploration and Production) (General) Regulation, 2018 prescribes details for the grant of Petroleum Agreement
 - Regulation 9 outlines in detail the General procedural requirements for a tender process
 - Regulations 10-11 mandates that a tender process shall be preceded by pre-qualification of prospective bidders
 - Regulations 12 and 13 analyses the process of Invitation to Tender and Tender documents
 - Regulation 14 deals with Bid submission and Content of Bid

Open, Transparent and Competitive Contract Awarding system

- Regulation 15 outlines the qualification requirements for operator
- Regulation 16 defines the system for Evaluation of bids and evaluation criteria for Petroleum Agreements
- Regulations 17-18 enumerates the process of Opening of bids and the Notice of decision to enter into a Petroleum Agreement
- Regulation 19 explains the process where the Minister needs to initiate Direct Negotiations

Open, Transparent and Competitive Contract Awarding system

- Regulation 20 establishes the creation and establishment of the Petroleum Register in line with Section 56 of the Act.
<https://www.ghanapetroleumregister.com/>
- Regulation 21 highlights the Transparency and Publication of Petroleum Agreement upon ratification.

Contract Transparency in Ghana: the journey so far

- The journey so far:
 - combined efforts by governments, companies and civil society
 - Early championship of disclosure by government and companies
 - Civil Society Push, including NREGI, GHEITI, ACEP etc
- Lessons for the Mining Sector:
 - Legislating disclosure, a catalyst
 - Disclosure can predate policy/legislation
 - Getting government and company commitment critical
- Gaps :
 - Using disclosed contracts to advance monitoring and accountability
 - Big push required to disclose mining contracts

Contract Disclosure in Mozambique



REPÚBLICA DE MOZAMBIQUE
MINISTRY OF MINERAL RESOURCES AND ENERGY

MINING AND OIL AND GAS CONTRACTS PUBLIC

Maputo, 10 December, 2020

BY: MARCELINA JOEL DIRECTOR OF LEGAL AFFAIRS



OUTLINES

- ❖ Enabling legal and regulatory framework.
- ❖ Mining and Petroleum laws that facilitated disclosures.
- ❖ Practice of disclosures, (which agency publishes contracts)
- ❖ Timeline of publication of contract after its entry into force
- ❖ Difficulties encountered
- ❖ Activities carried out to strengthen the publication of contracts
- ❖ Activities to be included in the 2020
- ❖ Civil society/stakeholder use of contracts



Enabling Legal and Regulatory Framework

1 Law nr 15/11 of August 10 public, private partnership (megaprojects law) – article 23

Without prejudice to safeguarding the confidentiality of strategic and competitive commercial information of the enterprise, the main contract is subject to the issuance of the prior inspection visa by the legally competent entity for that purpose, as well as the publication:
a) the main terms in the bulletin of the republic and in the Government portal;
of reports and accounting balances related to the activity of the enterprise.

2 Law nr 20/14, Of August 18 - Mining Law- Article 8 nr 4

Mining Contracts are published in the Official Gazette (Boletim da República), preceded by the prior approval of the Administrative Court. within 30 days.

Time Line
30 days

3 Lei nr 21/14, of August 18- Petroleum Law – article 28 nr. 2

Without prejudice to safeguarding the confidentiality of strategic and competitive commercial information from petroleum operations, the main concession contract entered into. is subject to the inspection and visa of the entity legally competent for that purpose, as well as the publication of the main terms of the concession contract.



Agency publishes contracts

1. The official Gazette- Boletim da Republica;
2. WWW.mireme.gov.mz
3. www.inp.gov.mz/ Info@inp.gov.mz
4. www.inami.gov.mz



Difficulties encountered

- Delays delay in granting the inspection visa provided by the Administrative Court;
- Very high amount of fee charged by Administrative court and companies sometimes question it and it even leads to court cases;
- Until the administrative court recognition of the contract it is not effective therefore it can not published.



Activities carried out to strengthen the publication of contracts

- Work with companies to keep in the contract the information that can be published;
- Raise the awareness about the importance of publication of the contracts for transparency reason and suppress any suspicious about the contract legality;
- Work with the Administrative Court to share the procedures as the general legal framework on the public construction and the acquisition of goods and services by State is different from the specific mining and petroleum legislation on the granting of authorization;



Activities to be included in the 2020

On going revision of the:

- Mining law ;
- Petroleum law , to strengthen the publication of contracts provisions;



Civil society/stakeholder implementation of the contracts

- Under the previous legal framework, the contracts were confidential;
- We faced difficulty to explain that the civil society that the only confidential information was strategic and competitive commercial information;
- With the PPP law this situation was clarified that and it seems acceptable;
- Positive Collaboration but still some issues to be improved.

5. Summary and Next steps



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Summary and next steps

For MSGs:

- Include contract transparency provisions in the elaboration of 2021 work plans
- Keep a list of active contracts
- Review and document obstacles to disclosure
- Specify support needs to International Secretariats and partners.

For IS:

- Identify and countries that require specific guidance and support on Contract disclosure



Priorities for 2021?

Thank you !

Visit our website at <https://eiti.org/en>



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